DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock St. Denver, CO 80202	 ▲ COURT USE ONLY ▲
THE STATE OF COLORADO, EX REL. JOHN SUTHERS, **PLAINTIFF** **V.** **LEONID SHIFRIN, MORTGAGE PLANNING AND LENDING SPECIALISTS, LTD., WHOLESALE MORTGAGE LENDING, LLC, CBA, INC., MORTGAGE PROCESSING GROUP, INC., AND SHIFRIN, INC.,** **DEFENDANTS**	
	Case Number: 08CV1047 Division: Civil Ctrm: 203
ORDER OF JUDGMENT	

Procedural Background

In this action, the State of Colorado (State) sued the Defendants pursuant to the Colorado Consumer Protection Act (CCPA), C.R.S. §§6-1-101-120 as a law enforcement action. The State seeks injunctive relief, civil penalties, restitution, disgorgement, attorney fees, and costs as authorized under the CCPA. The case went to trial over three and one-half weeks in a trial to the Court.

In their complaint, the State alleges six violations of §6-1-105. Specifically, violations of subparagraphs e, g, i, l, u, and uu. Two corporate Defendants had default judgments entered against them during the litigation. A consent judgment was reached with respect to one individual defendant, Jerry Johnson, and after the Plaintiffs case, the Court granted a directed verdict against

another individual defendant, Mark Shifrin. The remaining Defendants went to trial and are reflected in the above caption. The State's allegations claim that the remaining Defendants and others collectively engaged in a business practice of mortgage brokering and lending that violated the CCPA, the specifics of which the Court will address further in its ruling. The Defendants claim that no deceptive practices were used, that the Defendants cannot be charged or found liable in a collective manner, that the Defendants lacked intent as required under an enforcement action, and that the state cannot recover what it is requesting as relief.

Findings of Fact and Conclusions of Law

The State's theory is premised upon a collective set of trade practices, each individually tied to one of the remaining Defendants and others and unified through the organizational structure of the overall business. While evidence was presented of individual acts of Defendants that could be violations of the CCPA, the general tenure of the State's case relies upon this collective practice to support its claims. The Defendants challenge the individual acts constituting "steps" in the overall practice as not being violations as well as the individual responsibility for those acts and argue that a CCPA action cannot be used to lump practices and people together. They argue that the Court must look at each individual "step" and each individual participant to determine liability under the CCPA.

C.R.S. §6-1-105 states that a person engages in deceptive trade practices when, in the course of such person's business, vocation, or occupation, such person does enumerated acts. "Person" is notably defined as "an individual, corporation, business trust, estate, trust partnership, unincorporated association, **or two or more thereof having a joint or common interest,** or any other legal or commercial entity." Therefore, while joint and severable liability is not adopted *per se*, two or more entities can have combined interests which is furthered by individual acts of the entities themselves. Thus, separate entities become one "person" under the act when their individual activities combine into a joint or common interest and combine to constitute deceptive trade practices. *See, e.g.,* Showpiece Homes Corp. v. Assurance Co. of Am., 38 P.3d 47 (Colo. 2001).

While the combined interest can make separate entities one "person" under the act, such does not impute knowledge or scienter to those individual entities simply due to participation in the joint interest. Such scienter must still be demonstrated. If such scienter is demonstrated, separate entities can be found, in effect, jointly liable for deceptive trade practices under the Act.

The Court finds, therefore, that the CCPA does apply to situations where several individuals or corporations commit independent acts which, by themselves, can be considered not deceptive trade practices, but when committed together in knowing furtherance of a joint interest, can combine to become deceptive trade practices with concurrent liability to the separate entities. To find as the Defendants claim: lumping the Defendants and their acts together to find liability as improper, would render the CCPA ineffectual against savvy groups of individuals who combine legal efforts in an unlawful combination to commit deceptive trade practices. Given the broad legislative purpose of the CCPA the Court cannot envision such thwarting of the overall purpose by intelligent dissection of activities and diversity of persons to commit wrongs against consumers. The Court, instead, can look at the complained activities as a whole and the individual Defendants as a "person" engaged in a common interest without blindly lumping them all together for liability. The Court simply can determine if the acts combined to become deceptive trade practices and then look to the individual scienter and common interests to determine overall or combined liability under the Act.

The Claimed "Pattern and Practice" constituting Deceptive Trade Practices - General

The State claims and presented evidence that Defendants were involved in a mortgage brokerage and lending business between 2004 and 2007[1]. While, in actuality, several entities were present at the business, the state claims that they operated as one. The allegations are that the combined business used print advertisements promising low mortgage rates to draw consumers into the facility and were then directed to companies operated, owned, or controlled by Leo Shifrin. The State alleged that the advertisements were false, the Defendants challenge this notion. Regardless, the consumers who answered the ads ended up with appointments at the office located at 11551 E. Arapahoe Rd. Once there, the consumers requested loans at the advertised rates. The state alleges that the consumers were then given a loan which did not comply with their understanding of the loan terms, were not provided the required disclosures for the loan they received, or were charged fees which differed from what they were told. Once the consumers realized the problem, they were either ignored, again told misrepresentations, or had to attempt to rectify the loan on their own, suffering detriment. The State contends that this pattern of practice was consistent over the 2004 to

2007 period regardless of advertiser, mortgage broker, or Loan Company. The State contends that such practice was for the common purpose of putting people in option-ARM loans as to maximize revenue for the Defendants through higher commission payments.

The State has alleged six violations of the CCPA, identifying several specific acts of violation. However, each specific act has an actor and actions to put it into fruition. While the Court can analyze each challenged act with specificity, to begin there would raise the aspect put forth by the Defendants, that each act carries its own actor and scienter and cannot be held against all of the Defendants under the CCPA. To a certain extent, the Court agrees. However, if the Court begins with the general allegations taken together as a whole, such specific analysis may be unnecessary.[2]

The State presented evidence of 549 ads taken out by various persons or entities connected to the Defendants which they claim were deceptive. Direct evidence was received concerning approximately 20 ads. Indirect testimony from representative consumers and the State's expert was received for hundreds of other ads. Defendants put into evidence testimony that demonstrated that there was no falsity to the ads in that there was no testimony that, when the ads were placed there were no technically false portions to them and pointed out that there was no evidence that the loans advertised were not available. To a degree, the Court agrees with the Defendants on these two points to the extent that they stand for the proposition that the ads violated C.R.S. §6-1-105(1)(e). That, however, does not exonerate the ads themselves as part of a deceptive trade practice.

The evidence presented by the State did demonstrate for a portion of consumers that the ads, whether false or not, were not what they were given as loans when they specifically asked for them. Nine testifying consumers stated that they believed the ad was for a fixed rate loan and requested such ended up in an option-ARM with a teaser rate either at or lower than the advertised rate and was unaware that that is what they were getting. Specifically, that the teaser rate would change and do so rapidly after the term of the loan began. There was testimony that when asked, the Defendants or agents of the Defendants taking and submitting their application specifically set them

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[1] The Defendants argue that specific incidents occurred outside of the statute of limitations for enforcement. The Court makes its determination on a series of acts occurring over an extended amount of time, the last of which is within the statute of limitations. Therefore, the Court rejects this contention.

[2] Liability can be found and relief requested granted if the Attorney General can prove violation of any provision of the CCPA. Because this is an enforcement action, it is not necessary to demonstrate each and every violation alleged for relief. C.R.S. 6-1-112. Determination of individual violations once any violation is shown may only come into account in determining the amount of civil penalty or other relief.

into the option-ARM even knowing that the consumer wanted a fixed rate and lied about it or failed to mention that the rate was only for a short duration. In some cases, the required disclosures that could have alerted the consumers were never provided, or if provided, not provided timely enough to make an informed decision. Even later, at closing, some consumers were again misled to believe that they were getting the fixed rate even though the loan documents indicated otherwise.

Each of these "steps" in the process are what the State alleges were deceptive trade practices. However, the state also argues that, as a whole, the steps combined to create an overall scheme and the Court believes that it is this scheme that the Court can find to violate the CCPA when taking the steps into account and in context. That is, such an overall patterned scheme can be found to contain violations of subsections (g), (i), (l) and (u) regardless of the veracity of the ads themselves.

The Court heard from representative consumers. The State chose to proceed with affidavits for the remaining complaining consumers. Defendants argue that such was insufficient. The Court finds that such was insufficient to prove a specific violation of the CCPA for those consumers. However, as noted above, the Attorney General need only prove one or more violation of the CCPA. Once proven, the number of exact violations is only somewhat relevant to the civil penalty calculation and restorative findings. The Act itself contemplates such. C.R.S. §6-1-112 states "for the purposes of paragraph (a), a violation of any provision shall constitute a separate violation with respect to each consumer or transaction involved." Thus, if the Court is to find a violation of a provision, the affidavits can be used to determine remedy.

Also, if the Court is to find the general scheme to be violations of the CCPA, the Court must determine which of the Defendants were involved in the scheme sufficient to hold them liable. In other words, which participants shared the collective interest and knowledge and perpetuated the activities that fulfilled the scheme?

Defendant Leo Shifrin claims that he was not involved in many of the activities cited for violations of the CCPA. The Court finds this disingenuous. The vast bulk of the testimony and exhibits demonstrated that he was the leader, organizer, owner and/or the boss of all operations that took place at 11551 E. Arapahoe Rd. once he acquired the office. His own statements belie the claim that he did not participate in the scheme. In fact, the evidence clearly and convincingly demonstrated that he was the directing force of the operation and had control or input into every

aspect of the scheme. In fact, it was demonstrated that the 'common interest" of maximizing profits for the group was his in implementing and overseeing. While it wasn't evident to the Court if Defendant Shifrin designed the scheme or inherited it with the purchase of the business, it was demonstrated by a preponderance of the evidence that he was aware of it, controlled it and advanced it for his betterment.

Defendant Mortgage Planning and Lending Specialists, Ltd. (MPLS) did issue a number of the questioned advertisements. At least five of the representative consumers testified that they believed they were dealing with MPLS. Thus, MPLS was involved directly and indirectly as a facilitating entity to portions of the schematic whole.

Defendant CBA was originally bought from Tim Hester in 2005 with the acquisition of MPLS. It was utilized by Leo Shifrin to acquire or service broker's agreements with outside firms. MPLS paid CBA management fees during the relevant period. Leo Shifrin was its president. Thus, the Court finds that CBA was involved in perpetuating the scheme to a similar extent as Defendant Shifrin.

Defendant Mortgage Processing Group was also bought during the initial acquisition. It had an office at 11551 E. Arapahoe Rd. This company was also paid processing fees for mortgages from MPLS. Like MPLS, it can be held accountable for deceptive trade practices.

Defendant Wholesale Mortgage Lending, Inc. ran at least two ads in two different papers in the summer of 2006 and approximately 15 others during the relative timeframe. At least one of these ads influenced one of the representative witnesses to testify that she believed she was dealing with Wholesale Mortgage Lending. Thus, like MPLS, it can be held accountable

Defendant Shifrin Inc. was involved in the financing of the scheme. Evidence showed that commissions from the scheme were paid to Shifrin, Inc. Evidence also showed that Shifrin, Inc. secured lines of credit needed to get loans for the scheme and brokered loans for the consumers. Documents presented also showed that Shifrin Inc. was a majority owner of Vision Title Agency of Mile Hi, which did title work for several of the loans in question. These documents were presented to make borrowers aware of the business affiliation. They identify Shifrin Inc. as a majority owner of MPLS as well. Finally, the evidence showed that Shifrin, Inc., as its name suggests was the corporate entity controlled owned in part and directed by Leo Shifrin. As such, it can be held liable if violations are shown just like CBA.

Representative Consumers

Marilyn Moran

Ms. Moran was given an ad from Jupiter Lending. She called and met with Matt Green who told her he worked for Jupiter at 11551 E. Arapahoe Rd. She testified that she had been clear with Mr. Green that she was only interested in a fixed rate for a term of years, specifically a five year fixed interest only loan. She was told she could get a five year fixed rate loan at 1.95% and received a good faith estimate for such a loan. About a week before the closing, she received another good faith estimate for a loan at 1%. She testified that she did not read the closing documents that she signed. The loan she received was an adjustable rate loan which the interest rate adjusted after the first month (an option-ARM). When she followed up and complained, she was told that she got the loan she applied for.

Patricia Green

Ms. Green responded to an ad in the Denver Post in 2006. She set up a meeting to refinance her home. She met Keith Crawford at 11551 E. Arapahoe Rd. She assumed he worked for Wholesale Mortgage Lending, but had seen Mile Hi Mortgage on the door when she came in. She asked for a 5 year fixed rate loan at 3.25%. She was told it would be no problem. At closing, she noted a different rate on the documents and stopped the closing. Mr. Crawford assured her that he would get it changed and used an excuse that the copier was down at the time. She testified that she understood the documents she was signing were legal documents, but she trusted Mr. Crawford.

Cynthia Garcia

Ms. Garcia saw a newspaper ad in 2006 and called to set up a meeting. She met with Matt Green at 11551 E. Arapahoe Road. She discussed an adjustable rate loan with a five year fixed interest rate of 3.25%. At a second meeting she met with Jerry Johnson. He told her she had qualified for the rate and assured her that it was a fixed rate adjustable loan. At closing, she met again with Jerry Johnson and she was presented with a different loan purporting to be 1.25%. He went over the loan and "answered all our questions to our liking." She testified that she still believed that the loan was a 5 year fixed rate ARM. Three days after closing, she received her closing documents and became concerned that the loan had negative amortization.

She tried to get hold of Jerry Johnson, but was unable. She was told later by Countrywide that the loan was an option-ARM which could have negative amortization and refinanced the loan.

Patricia Burger

Ms. Burger saw a print ad in the paper from Juniper Lending for a 2% fixed rate ARM for five years and decided to talk about refinancing. When she called the number she set up an appointment and was assured at that time that there were no closing costs involved. She met with Matt Green. They spoke about and applied for what she believed to be a 5 year fixed rate ARM at 1.95%. At closing, she was presented with a loan having a rate of 1%. She was told by Matt Green that he was able to "buy it down" to that rate. Her and her husband then closed on the loan. She received a copy of her loan documents a month after the close. She stated that while she understood the documents were legally binding, she never would have signed if she knew it was an option-ARM.

William Walker

Mr. Walker saw an ad in the newspaper that advertised what he termed reasonable rates and called to set up an appointment. He met with Matt Green in July of 2006. At that meeting, Mr. Walker specifically told Matt Green that he did not want a loan with negative amortization. After discussions, Mr. Walker understood he was applying for a 5 year fixed Arm with a rate of 3.25%. He received a good faith estimate with this amount. At closing, he met with Jerry Johnson who told him he had a different loan with a better interest rate. He testified that he still believed the loan to be a 5 year fixed rate loan, even though the documents he signed said it was something else. He said he relied on Mr. Johnson as being a professional and signed the documents. The loan was an option-ARM loan.

Kimberly Pforr

Ms. Pforr saw an ad for Jupiter Lending hoping to get a 30 year fixed loan. She set up a meeting and met with Matt Green. He told them that they did not qualify for a 30 year fixed loan and offered a 5 year fixed ARM at 1.95% with a rate that would go up a maximum of 1 point per year. She was given a good faith estimate for such a loan. The Pforrs went to closing at 11551 E. Arapahoe Rd. in December 2006. They met with Jerry Johnson and were presented with a different loan with a rate of 4.375 and were assured that all other terms would remain the same. The Pforrs decided to go forward with that rate as it was still a good rate. The Pforrs got their closing documents the next day and did not review them. They found out from Countrywide, the

purchaser of the loan about it being an option-ARM. They called Mortgage Planning and Service, but never got a call back. When they met with Jerry Johnson he states "you signed the paperwork."

Michelle Henkle

Ms. Henkle saw an ad in the paper concerning five year fixed rate loans that were comparable to others that she had seen. She called the number and applied for the loan over the phone. She went to the office at 11551 E. Arapahoe Rd. to close in October 2006. At that time, she was presented with an option-ARM loan with a teaser rate of 2.375%. She testified that she asked three or four times if the loan was fixed for 5 years and was told each time the loan was fixed. She was also told for the first time about a pre-payment penalty. At this time she tried to back out of the loan. The closer, however, told her that if she chose to refinance or sell their home resulting in a prepayment penalty, that MPLS would cover the penalty. Ms. Henkle testified that that assurance "made it a wash". She was given a letter stating the agreement signed by Leo Shifrin. She testified that she did not know the loan was an option-ARM until her first payment was due.

Peter Bohling

Mr. Bohling saw an ad for MPLS in the newspaper in June of 2006 for 30 year fixed rate mortgages with no closing costs. He called the number and subsequently met with Matt Green to discuss getting a 30 year fixed rate mortgage. Matt Green took Mr. Bohling's information and provided him with a good faith estimate for a 30 year fixed rate mortgage at 5.99%. Over the next few weeks Mr. Bohling attempted to contact Mr. Green several times to assure that the loan was in place as they moved toward the purchase of their home. He finally met with Mr. Green in mid-July since some of the appraisal deadlines were getting close. He asked for written confirmation that the loan was in place and received a copy of the GFE he had already been given, but was assured that the loan was ready. On the closing date, the Bohlings were presented with a 30 year fixed rate loan at 6.5% which included closing fees. The Bohlings felt they had to proceed with the closing due to the sale of the home and their need to move in. After they closed, they tried to contact Matt Green and finally were told that he had been fired.

Darren Higgs

Mr. Higgs heard an advertisement for Jupiter Lending on the radio in October 2004. He called and was put in touch with Jerry Johnson. He met with Jerry Johnson in November 2006 at 11551 E. Arapahoe Rd. Mr. Higgs wanted to refinance two mortgages. He wanted an 80% loan at a fixed rate for a period of years and a 20% ARM loan. At the meeting, he was provided a Good Faith Estimate for the 80% loan reflecting a 4% interest rate and $1,240 closing costs. At closing, he was presented with an option-ARM starting at 4.5% with significantly higher closing costs. He went ahead with the loan and did not realize it was an adjustable loan until he received his statements. He attempted to contact Jerry Johnson with little success. Finally, he was told that Leo Shifrin was Mr. Johnson's boss and wrote him a letter about his concerns. The letter was not responded to.

Douglas Werner

Mr. Werner saw an ad in the paper for Jupiter Lending and called to get a mortgage on his existing home which was paid off. He met with a representative at 11551 E. Arapahoe Rd in June 2005. At that time, he was told he was applying for a 30 year fixed rate mortgage at 4.99% with no origination fees and given a good faith estimate. At closing in July, the loan he was presented with was a 30 year fixed mortgage at 5.25% and included settlement charges of $11,971. They were able to negotiate a split of the fees to reduce that amount by $3,120. They chose to go ahead with the mortgage. Mr. Werner stated that, while he did not rescind the loan, it was not the loan he was promised.

Barbara Fox

Ms. Fox saw an ad in the newspaper concerning a 5 year fixed rate ARM at 2.875%. She called and arranged a meeting to refinance her home. She met with Matt Green and discussed a 5 year fixed rate ARM. This was the loan she applied for. She did not receive a good faith estimate. At closing, she met with Matt Green and Jerry Johnson. Mr. Johnson was referred to as "from the title company." At that time, she was presented with an option-ARM loan at 2%, increasing after September 1, 2006. She proceeded to sign the loan.

After closing, she contacted Matt Green to ask about the possibility of her loan having negative amortization. She was told by him that her loan had "no negative amortization. After

her loan payments began to readjust, she decided to sell the townhome. She testified that "no one should have given me that loan, I couldn't afford it."

June Nelson

Ms. Nelson is 72 years old. She saw an ad in the newspaper in the summer of 2006 suggesting good rates, but could not remember the exact rates when she testified. She set up an appointment to discuss refinancing her existing two loans, a 10 year fixed rate and an ARM. She went to 11551 E. Arapahoe Rd. and met with Matt Green. There they discussed a 30 year fixed rate mortgage at 5%. She was given a Good Faith Estimate reflecting 3.25%. After the application meeting, she called Matt Green and was told that she was approved. At closing, she was presented with an option-ARM by Matt Green. When she realized that it was adjustable she refused to sign. She was taken back to another office and introduced to Leo Shifrin. He attempted to convince her that the interest rate was better and explains the loan to her, but she still refused to sign. At that point, Jerry Johnson came in an again talked to her about the loan. He told her it was the best she could qualify for and the best that they could do. Leo Shifrin then told her that if she did not like the loan, he would refinance her for no closing costs. She stated she was being pressured and that Leo Shifrin told her he would reduce the origination fee to 1%. She stated that she went ahead and signed the loan, but did not understand the loan she got. She did not review the paperwork because she was disgusted and felt "trapped". Later when she got her statements, she called Leo Shifrin to refinance. She refinanced through two new loans, one for the original note and another to cover the prepayment penalty from the option-ARM.

Remidios Stoneham and Deborah Sampson

The two remaining representative witnesses testified live and by deposition concerning slightly differing situations. Ms. Stoneham testified concerning a 30 year mortgage in which her rate that she was told she locked in (5.575%) changed to a 5.875% loan at closing and had larger loan closing costs. And Ms. Sampson testified concerning her expectation of a 1.95 adjustable rate loan fixed for an indeterminate amount of time. When she closed, she ended up with a 1% option-ARM, which she later refinanced.

Violation of the CCPA

In total, the representative consumers demonstrated a pattern involving various aspects of deceptive trade practices by various individuals and entities. Specifically, they demonstrate initiating contact with advertisements of a particular type of loan (fixed rate for a term of years as opposed to an option-ARM), convincing the consumer or otherwise not disclosing to the consumer the actual terms and nature of the loan, and closing on a loan different than expected by the consumer. While the players may change, the loan terms may vary, and the ultimate loans may differ, the general scheme demonstrated by the representative consumers is that they were swayed by representations made to them in the ads, in their applications, and at times during and after close, induced them to sign a loan that they did not bargain for or completely understand. That is, the consumer is shown an attractive offer to invite inquiry, false or incomplete representations are made to gain information for application, and ultimately an undesired product is closed on in order to maximize profit due to high origination or other fees. While technically different from the classic "bait and switch", such a scheme, in various stages violates C.R.S. 6-1-104(e), (g), (i), (u), and when the practice involves mortgage brokering, subsection (uu), specifically C.R.S. 38-40-105(a) and (b).

Further, when an organization is made up of entities whose common purpose can be shown through pattern practice to nullify the individuality of the entities, liability can be found for the individual entities as a "person" under the Act. Clearly, Leo Shifrin, MPLS and Shifrin Inc. were directly involved with the scheme through their agents in fact, Matt Green, Jupiter Lending, and Jerry Johnson. Further, the State demonstrated by a preponderance of the evidence that Defendants CBA, Inc. and Wholesale Mortgage Lending were implicated through use by Leo Shifrin in the scheme sufficient to find liability. Through the activities testified to, however, the Court cannot find sufficient ties to the scheme for Mortgage Processing Group Inc. to sustain scienter or liability. While this corporation may have been peripherally utilized by the other entities during the course of their business, the State did not demonstrate liability by preponderance.

The State, therefore, has demonstrated by a preponderance of the evidence that Leo Shifrin, MPLS, Shifrin Inc. CBA, Inc. and Wholesale Mortgage Lending conducted deceptive trade practices as described by C.R.S. §6-1-104(g), (i), (l), (u), and (uu).

Specific Violations

C.R.S. §6-1-104(g), (i), and (l)

The combined practice of the remaining Defendants of representing option-ARM loans as fixed term ARM loans through advertising or through comments concerning applications about the interest rates being fixed for a term when the rates were variable almost from inception constitutes a deceptive trade practice. So too does representations of no or low fees which end up being higher at closing. Such practice occurred during the course of the Defendants' business, was made by the Defendants or representatives of the Defendants in the course of business, and was made with the intent to get the consumers into option-ARMs or loans with higher fees to maximize profits. Subsections (g) and (i), contrary to the Defendants' contention, do not require that the advertisements or statements be false *per se*. Only that they represent a character of the product that the broker does not intend to supply and such representations are made with the knowledge that the broker does not intend to supply a product with such characteristics. Subsection (l) also does not require falsity, just misleading statements of fact concerning the price. Statements concerning low or no fees which subsequently get re-labeled as other fees elsewhere in the loan qualify for this.

C.R.S. §6-1-104 (u)

As above, failing to disclose the actual nature of the variable rate or the total amount of the fees associated with a loan does not require false statements, but a lack of statements. The Court finds that the terms of a loan are the primary concern of a borrower. Knowingly not disclosing the true nature of the variable rate or the fees constitutes a violation of this section.

C.R.S. §6-1-104(uu)

In the same way, the knowing failure to disclose or to disclose non-applicable terms of the loans constitutes a violation of C.R.S. §38-40-105(1)(b) in the same manner, only just directed specifically at mortgage loans as opposed to other goods.

Violations as Applied

The Court finds that the Defendants knowingly advertised loan products which either misled consumers to believe that they were fixed rate term loans when they were not or advertised low or no closing costs. Regardless of the actual advertiser, the Court finds that the

businesses conducted with and through Leo Shifrin and residing at 11551 E. Arapahoe Rd. detailed above universally utilized the advertisements and that Leo Shifrin had some measure of control and review of the ads even if he did not actually place them. Once the consumers were at the business location or on the phone, representations that were either false or misleading were given directly to the consumers concerning the nature of the loans in order to accomplish the application process. The information gathered from these applications were then utilized to place the borrowers into other loans with differing rates and terms in order to maximize the commissions of the companies and brokers. Further, the Court finds that required disclosures were in some cases never given. The Court finds that the advertisements were relied upon by the consumers and were misleading, that the representations made to them were material and led to the enticement of the consumers to enter the loans, and that the undisclosed information was material to the consumers decision to sign the loans. Finally, the Court finds that the Defendants had the required knowledge and motive to do what they were doing throughout the process.

Based upon this, the Court need not address the applicability of subsection (e) of C.R.S. §6-1-104 or of subsections (a) or (d) of 38-40-105. As the Court has noted, once the state has proven any violation of the CCPA, it is immaterial that there may be others. If the Court is convinced of violations that encompass the activity of the violator, the how many and of what type are irrelevant to enforcement. Since civil penalties are determined on the consumer affected and the transaction involved, it is the finding that an activity violated the CCPA that is important, not how each violation specifically occurred. In this instance, the general scheme utilized during the loan processes may have constituted different violations; the Court need not find each individual violation with exact specificity. It is enough to determine a violation and identify the transactions affected. The statute gives multiple options for violation, no one of which is preclusive of others. While technically the Court could find multiple violations for each particular consumer, this Court finds such a method to be contrary to and over-fulfilling the deterrence and punishment aspects so lauded by the CCPA.

Remedies

Injunctive relief

The Court can enter injunctive relief to prevent the Defendants from using or employing deceptive trade practices to prevent future conduct. In this matter, the Defendants never

challenged the request for injunctive relief if liability was found. The Court finds such an injunction proper. Thus, the Court enjoins the Defendants found liable above and any other persons or entities acting under their control or in concert with them from:

1. Engaging or otherwise participating, directly or indirectly, in mortgage loan origination, mortgage brokerage activity, mortgage assistance activity, mortgage relief activity, foreclosure consulting, loan modifications, real estate activity, appraisals, title services, underwriting, lending, or loan or forensic audits in any capacity;

2. Soliciting, advertising, selling, marketing, displaying, offering, performing, or accepting payment for services, including lead generation and product sales, relating to mortgage loan origination, mortgage brokerage activity, mortgage assistance activity, mortgage relief activity, foreclosure consulting, loan modifications, real estate activity, appraisals, title services, underwriting, lending, or loan or forensic audits;

3. Publishing, distributing, or disseminating any information, including written, oral, or video, to accept or receive, directly or indirectly, payment relating to mortgage loan origination, mortgage brokerage activity, mortgage assistance activity, mortgage relief activity, foreclosure consulting, loan modifications, real estate activity, appraisals, title services, underwriting, lending, or loan or forensic audits; and

4. Applying for any professional license in the State of Colorado for any of the above activities .

Civil Penalties

While the Court must order civil penalties upon a finding of violation of the CCPA, the Court can determine the penalties on every transaction involved, on any consumer involved or both. By transaction involved, the Court is not limited by whether a transaction involved consumer injury. By consumer involved, the Court can take each effected consumer and count it as a separate violation warranting penalty. The maximum civil penalty shall not exceed $100,000.

The State requests both transaction involved and consumer involved and has itemized how they believe each breaks out. While the penalties for each are not exclusive of each other, this Court reads the statute to cap the maximum penalty at $100,000, whether transactional, consumer determined or both. In this case, taken transactionally as defined by May Dept. Stores v. State of Colo., the civil penalties far exceed $100,000. Even of the Court only considers the testifying consumers and the ads directly testified about in the context of the above scheme, it finds itself against the cap. Considering that each ad each day could be considered a violation and that each consumer who testified by affidavit could be considered a violation, the penalty far exceeds the cap. Thus the Court orders the Defendants to pay a $100,000 civil penalty to the State.

Restitution

The Court may make an order which may be necessary to completely compensate or restore the original position of any person injured by means of any such deceptive practices. While this is not restitution *per se*, it is its very near equivalent. The State presented evidence through testimony, deposition and through affidavit of over thirty consumers injured by deceptive trade practices. The Court heard testimony of how the state calculated the amounts necessary to restore those consumers and finds the calculation reasonable. The Court notes that the calculation was actually less than the amount necessary to completely compensate the consumers, but was reasonably done to calculate the accountable losses of the consumers. The calculation was a simple mathematical calculation which compared the rates promised with the ones given and the difference thereof over the life of the relevant period of affect. The Court did an independent calculation and ultimately verified the amount requested by the State. The total amount of restorative compensation is $566,050.47. Individual amounts shall be calculated per the State's calculation and disbursed to the individual consumers accordingly.

Disgorgement

To calculate disgorgement, the State must reasonably approximate the amount of unjust gains. After such a showing, the burden shifts to the Defendants to demonstrate that the calculations were erroneous. While the State made a reasonable approximation of the amount of enrichment in this area, the Defendants also carried their burden of showing the errors in the

assumptions used to calculate the amount. The assumptions relied on may have been the best the State could do with the information provided in discovery, their calculation assumes that the business records given at trial were accurate at the time they reflect and also the assumption that every loan made during the relevant period was a result of the deceptive trade practices. The Defendants, through cross examination, carried their burden by demonstrating the folly of those two assumptions upon which the State relied. Because of this, the Court cannot determine with specificity how much enrichment occurred. The only verifiable amount concerned the actual consumer complaints received by the State and offered to the Court through deposition, testimony and affidavit. Thus the Court orders disgorgement in the amount of $246,723.74 in the aggregate.

Attorney Fees and Costs

C.R.S. § 6-1-113 makes mandatory an award of reasonable attorney fees and costs upon successful enforcement of the CCPA. As the Court has determined that the State was successful in their enforcement effort, it awards attorney fees and costs. The State shall provide an affidavit of attorney fees and costs which will govern the award subject to a reasonableness inquiry within 14 days of this order.

WHEREFORE, the Court finds that the State has proven by a preponderance of the evidence that Leonid Shifrin, Mortgage Planning and Lending Specialists, Ltd., CBA, Inc, Wholesale Mortgage Lending, LLC, and Shifrin, Inc. have violated the Colorado Consumer Protection Act and orders:

1. That such Defendants shall be enjoined as outlined above;
2. That such Defendants are jointly and severably liable for a civil penalty in the amount of $100,000;
3. That such Defendants are jointly and severably liable for restorative compensation in the amount of $566,050.47;
4. That such Defendants shall pay to the State General Fund disgorgement in the amount of $246,723.74[3];

[3] While the Court sets these monetary amounts, the Court is cognizant of the bankruptcy stay in effect on collecting the amounts from debtors in bankruptcy.

5. That such Defendants shall be jointly and severably liable for attorney fees and costs of the State to be submitted by affidavit and subject to a challenge of reasonability.
6. The case against Mortgage Processing Group is dismissed with prejudice.

DATED this 29th day of April, 2011.

BY THE COURT,

Brian Whitney
District Court Judge
City and County of Denver